

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARSHALL GREAR JR.,

Petitioner,

v.

MITCH PERRY,

Respondent.

Case No. 11-cv-13592

HONORABLE PAUL D. BORMAN

ORDER OF DISMISSAL

This is a habeas corpus action, filed under 28 U.S.C. §2254, by Marshall Grear Jr. (“petitioner”), a state prisoner. This matter comes before the Court on petitioner’s letter informing the Court that he would like to dismiss this action and no longer pursue it. See Dkt. 8.

The Court construes petitioner’s letter as a request for an order dismissing this action pursuant to Fed. R. Civ. P. 41(a)(2).¹ Rule 41 provides that a civil action may be voluntarily dismissed by a plaintiff without a court order if the plaintiff files a notice of dismissal before the opposing party serves an answer or a motion for summary judgment, or if the plaintiff files a stipulation of dismissal signed by all parties that have appeared. Fed. R. Civ. P. 41(a)(1). In all other cases, dismissal at the plaintiff’s request is only by court order. Fed. R. Civ. P. 41(a)(2). Respondent had answered the petition and filed the Rule 5 materials before petitioner requested dismissal, and petitioner has not filed a stipulation of dismissal signed by all parties, so dismissal is only available by order. See Fed. R. Civ. P. 41(a)(2).

¹The Federal Rules of Civil Procedure apply to habeas actions to the extent they are not inconsistent with any other statutory provision or the habeas rules. See Rule 12, Rules Governing Section 2254 Cases, 28 U.S.C. foll. 2254.

Rule 41(a)(2) provides that a unilateral request by a plaintiff for dismissal of his action following the filing of an answer may be granted by court order, “on terms that the court considers proper.” Respondent has not opposed petitioner’s request for a dismissal or asked that it be granted with prejudice. The Court will therefore dismiss the action without prejudice.

Accordingly, the Court **DISMISSES WITHOUT PREJUDICE** the petition for a writ of habeas corpus.

SO ORDERED.

s/Paul D. Borman
PAUL D. BORMAN
United States District Judge

Dated: June 24, 2013

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on June 24, 2013, by electronic and/or ordinary mail.

s/Deborah R. Tofil
Deborah R. Tofil
Case Manager